



6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R6-OAR-2018-0386; FRL-9983-93-Region 6]

Air Plan Approval; Texas; Control of Air Pollution from Motor Vehicles with Mobile Source Incentive Programs

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: Pursuant to the Federal Clean Air Act (CAA or the Act), the Environmental Protection Agency (EPA) is approving revisions to the Texas State Implementation Plan (SIP) submitted by the State of Texas that pertain to regulations to control air pollution from motor vehicles with mobile source incentive programs.

DATES: This rule is effective on [INSERT DATE 90 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER] without further notice, unless the EPA receives relevant adverse comment by [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]. If the EPA receives such comment, the EPA will publish a timely withdrawal in the **Federal Register** informing the public that this rule will not take effect.

ADDRESSES: Submit your comments, identified by Docket No. EPA-R6-OAR-2018-0386, at <http://www.regulations.gov> or via email to pitre.randy@epa.gov. Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from Regulations.gov. The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information

(CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (i.e. on the web, cloud, or other file sharing system). For additional submission methods, please contact Mr. Randy Pitre, (214) 665-7299, pitre.randy@epa.gov. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <http://www2.epa.gov/dockets/commenting-epa-dockets>.

Docket: The index to the docket for this action is available electronically at www.regulations.gov and in hard copy at EPA Region 6, 1445 Ross Avenue, Suite 700, Dallas, Texas. While all documents in the docket are listed in the index, some information may be publicly available only at the hard copy location (e.g., copyrighted material), and some may not be publicly available at either location (e.g., CBI).

FOR FURTHER INFORMATION CONTACT: Mr. Randy Pitre, (214) 665-7299, pitre.randy@epa.gov. To inspect the hard copy materials, please schedule an appointment with Mr. Randy Pitre or Mr. Bill Deese at (214) 665-7253.

SUPPLEMENTARY INFORMATION: Throughout this document “we,” “us,” and “our” means the EPA.

I. Background

A. CAA and SIPs

Section 110 of the CAA requires states to develop and submit to the EPA a SIP to ensure that state air quality meets National Ambient Air Quality Standards. These ambient standards

currently address six criteria pollutants: carbon monoxide, nitrogen dioxide, ozone, lead, particulate matter, and sulfur dioxide. Each federally-approved SIP protects air quality primarily by addressing air pollution at its point of origin through air pollution regulations and control strategies. The EPA approved SIP regulations and control strategies are federally enforceable.

B. Texas' submittal

Texas submitted a revision to its SIP to update and improve the mobile source incentive program regulations for diesel vehicles, clean fleets and drayage trucks.¹ Specifically, on May 25, 2018, the State of Texas through the Texas Commission on Environmental Quality (TCEQ) submitted revisions to its Mobile Source Incentive Programs that are found in Title 30 of the Texas Administrative Code (30 TAC), Chapter 114 (Control of Air Pollution from Motor Vehicles), Subchapter K (Mobile Source Incentive Programs). The May 25, 2018, submittal revised regulations for the (1) Diesel Emissions Reduction Incentive Program for On-Road and Non-Road Vehicles (Division 3), (2) Texas Clean Fleet Program (Division 5), and (3) Drayage Truck Incentive Program (Division 8, renamed as “Seaport and Rail Yard Areas Emissions Reduction Program”).

C. What Criteria must be met for the EPA to Approve this SIP revision?

In general, economic and mobile source incentive programs are programs that provide economic incentives for reducing air pollution emissions from on-road heavy-duty motor vehicles and non-road equipment emission sources. Because the SIP submittal revision pertains to economic incentive programs to reduce air pollution emissions from mobile sources, we

¹ The revisions to the Texas SIP submitted to EPA as part of this action were in response to the adoption of Senate Bill 1731 enacted by the 85th Texas Legislature, 2017, Regular Session, which amended the statutory provisions pertaining to programs that are part of the Texas Emissions Reduction Plan (TERP). The mobile incentive programs implemented by the SIP revision are part of the TERP. For more information on TERP, please see: www.tceq.texas.gov/airquality/terp.

evaluated them using (1) CAA section 182(g) (Economic Incentive Program) (2) our policy guidance on economic incentive programs found in 40 CFR part 51, subpart U (Economic Incentive Programs) and (3) our guidance document “*Improving Air Quality with Economic Incentive Programs*” (EPA-452/R-01-001, January 2001, www.epa.gov/sites/production/files/2015-07/documents/eipfin.pdf). An economic incentive program achieves an air quality objective by providing market-based incentives or information to emission sources. Three fundamental principles apply to all approvable economic incentive programs: integrity, equity, and environmental benefit.

Pursuant to 40 CFR Part 51.493 (State Program Requirements), Economic Incentive Programs (EIPs) shall be (1) State and federally enforceable, (2) nondiscriminatory, and (3) consistent with the timely attainment of national ambient air quality standards, all applicable reasonable further progress and visibility requirements, applicable prevention of significant deterioration increments, and all other requirements of the CAA. Programs in nonattainment areas for which credit is taken in attainment and RFP demonstrations shall be designed to ensure that the effects of the program are quantifiable and permanent over the entire duration of the program, and that the credit taken is limited to that which is surplus. Statutory programs shall be designed to result in quantifiable, significant reductions in actual emissions.² As discussed below, we find the State’s SIP revision submittal is consistent with above-referenced elements and our review and evaluation of the revisions are discussed in detail in our Technical Support Document (TSD).

II. The EPA’s Evaluation

² As explained in more detail in the technical support document (and below), we have previously approved the Texas mobile source economic incentive program regulations, as we found that the regulations met the CAA and 40 CFR 51 Subpart U (Economic Incentive Programs) requirements. We have provided references to those prior approvals upon which these revisions are based.

We have prepared a TSD for this rulemaking which details our evaluation of the SIP revisions. Our TSD may be accessed online at <http://www.regulations.gov>, Docket No. EPA-R06-OAR-2018-0386. As detailed more below, and in our TSD, we believe the SIP revisions to the Texas mobile source incentive programs meet the federal EIP requirements and are approvable. The Texas Mobile Source Economic Incentive Programs are consistent with the CAA as they will reduce air pollution and emissions of nitrogen oxides (NO_x), which is a precursor to ozone and particulate matter. The emission reductions from replacing vehicles or replacing, repowering or retrofitting engines can be quantified, and provide an environmental benefit by reducing air pollution emissions by encouraging the use of newer diesel technologies in the Texas nonattainment areas. If Texas includes emission reductions from these programs in future attainment or reasonable further progress SIPs, EPA will evaluate the amount of reductions it achieves at that time. We are approving the Texas SIP submittal as part of the Texas SIP.

As stated earlier, we have previously approved the Texas mobile source incentive program regulations as meeting CAA and 40 CFR 51.493 regulatory requirements (See 82 FR 26756, June 9, 2017; 79 FR 5287, January 31, 2014; 75 FR 18061, April 9, 2010; 70 FR 18308, April 11, 2005). The May 25, 2018 SIP revision continues to meet these federal requirements.

A summary of our evaluation is discussed below:

A. Diesel Emission Reduction Incentive Program for On-Road and Non-Road Vehicles

The Diesel Emission Reduction Incentive Program for On-Road and Non-Road Vehicles provides funding for businesses to reduce emissions from diesel engines. The program includes a component that applies to small businesses. The revisions to this program revise 30 TAC Sections 114.620, 114.622 and 114.623. The revisions amended the 30 TAC 114.622(h)

Incentive Program Requirements from the Executive Director “shall” to “may” waive certain program eligibility criteria “on a finding of good cause.”³ The revisions amended the definition of a “Small Business” to a business that (1) owns or operates not more than five vehicles (previously 2), (2) owns or operates an on-road diesel vehicle (previously one with a pre-1994 engine model) or a non-road diesel (previously one with uncontrolled emissions) and (3) has owned the on-road or non-road diesel subject to the funding for more than two years (previously one year). This revision would expand the small business component of the program and make it more efficient by focusing on older diesel engines. An itemized list of the revisions, with our evaluation of each, is provided in the TSD.

B. Texas Clean Fleet Program

The Texas Clean Fleet Program provides funding to businesses with a fleet of 75 or more vehicles to replace diesel vehicles with a lower emitting hybrid or alternative fuel vehicle. The revisions to this program revise 30 TAC Sections 114.650-114.653. The number of vehicles qualifying for replacement was revised to 10 or more (previously 20 or more). This revision would allow for more replacements to be eligible for the program. The revisions include a change in definition from “clean transportation triangle” to “clean transportation zone” that would include additional counties that were not a part of the previous “clean transportation triangle.” The revisions include a change to 30 TAC 114.653(e) from the executive director

³ The original 30 TAC 114.622(h) provision was approved in a previous regulatory action (79 FR 67068) on November 12, 2014. We find the change from “shall” to “may” continues to be approvable. In determining good cause and deciding whether to grant a waiver, the executive director shall ensure that the emissions reductions that will be attributed to the project will still be valid and, where applicable, meet the conditions for assignment for credit to the state implementation plan. See our TSD for a detailed history and rationale for approval of this provision.

“shall” to “may” waive certain specified eligibility criteria upon “a finding of good cause.”⁴ An itemized list of the revisions, with our evaluation of each, is provided in the TSD.

C. Seaport and Rail Yard Areas Emissions Reduction Program

The Seaport and Rail Yard Areas Emissions Reduction Program (formerly the Drayage Truck Incentive Program) provides funding to encourage owners to reduce emissions from drayage trucks at seaports and rail yards. Drayage refers to the transport of goods over a short distance. The revisions to this program revise 30 TAC Sections 114.680-114.682. In addition to changing the name of the program, the revisions changed the requirements for replacing or repowering drayage trucks. As revised, the replacement engine must: (1) be powered by an electric motor or contain an engine certified to current federal emissions standards and (2) emit at least 25% less NO_x. In addition, unless otherwise determined by the commission, the NO_x emissions rate of engines replaced or purchased under this program will be based on the emissions standard or family emissions limit to which the engine is certified or, for replacement of an uncontrolled engine, a baseline emissions rate established by the commission.⁵ The previous requirements were that: (1) the replacement drayage truck have an engine of model year 2010 or later and (2) the drayage truck being replaced must have an engine of model year 2006 or earlier. This revision would set a minimum in the amount of NO_x reduced (at least 25% less).

An itemized list of the revisions, with our evaluation of each, is provided in the TSD.

D. CAA 110(l) Demonstration

⁴ EPA previously approved the original 30 TAC 114.653(e) provision at 79 FR 5287 on January 31, 2014. This provision change from “shall” to “may” continues to be approvable. Similar to 114.622(h), we interpret that the executive director shall ensure that the projected emissions reductions will be valid and, where applicable, meet the conditions for assignment for credit to the state implementation plan. See our TSD for a detailed history and rationale for approval of this provision.

⁵ Similar to 30 TAC 114.622(h) and 30 TAC 114.653(e), we interpret this provision so that the executive director shall ensure that the projected emissions reductions will be valid and, where applicable, meet the conditions for assignment for credit to the state implementation plan. See our TSD for a detailed history and rationale for approval of this provision.

Section 110 (l) of the CAA requires that each revision to an implementation plan submitted by a State under the CAA shall be adopted by such State after reasonable notice and public hearing. The Administrator shall not approve a revision of a SIP if the revision would interfere with any applicable requirement concerning attainment and reasonable further progress (as defined in Section 7501 of the CAA) or any other applicable requirements of the CAA. As the regulation revisions discussed above pertain to voluntary incentive programs for reducing emissions, they will not interfere with any applicable requirement concerning attainment and reasonable further progress or any other applicable requirement of the CAA. EPA approval of the revisions is consistent with CAA 110(l).

III. Final Action

We are approving revisions to the Texas SIP that pertain to regulations to control air pollution from motor vehicles with mobile source incentive programs. Specifically, we are approving revisions to 30 TAC Sections 114.620, 114.622, 114.623, 114.650-114.653, and 114.680-114.682.

The EPA is publishing this rule without prior proposal because we view this as a non-controversial amendment and anticipate no adverse comments. However, in the proposed rules section of this **Federal Register** publication, we are publishing a separate document that will serve as the proposal to approve the SIP revision if relevant adverse comments are received. This rule will be effective on **[INSERT DATE 90 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]** without further notice unless we receive relevant adverse comment by **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**. If we receive relevant adverse comments, we will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. We

will address all public comments in a subsequent final rule based on the proposed rule. We will not institute a second comment period on this action. Any parties interested in commenting must do so now. Please note that if we receive relevant adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, we may adopt as final those provisions of the rule that are not the subject of an adverse comment.

IV. Incorporation by Reference

In this rule, the EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is finalizing the incorporation by reference of the revisions to the Texas regulations as described in the Final Action section above. The EPA has made, and will continue to make, these materials generally available through www.regulations.gov and at the EPA Region 6 Office (please contact Randy Pitre, (214) 665-7299, pitre.randy@epa.gov for more information). Therefore, these materials have been approved by EPA for inclusion in the SIP, have been incorporated by reference by EPA into that plan, are fully federally enforceable under sections 110 and 113 of the CAA as of the effective date of the final rulemaking of EPA's approval, and will be incorporated by reference in the next update to the SIP compilation.

V. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, the EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state

law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a “significant regulatory action” subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Is not an Executive Order 13771 (82 FR 9339, February 2, 2017) regulatory action because SIP approvals are exempted under Executive Order 12866;
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and

- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. The EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action.

This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: September 26, 2018.

Anne Idsal,
Regional Administrator, Region 6.

40 CFR part 52 is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart SS – Texas

2. In § 52.2270, in paragraph (c), the table titled “EPA APPROVED REGULATIONS IN THE TEXAS SIP” is amended by revising the entries for sections 114.620, 114.622, 114.623, 114.650-114.653 and 114.680-114.682; and for Division 8 of Subchapter K in Chapter 114 to read as follows.

§ 52.2270 Identification of plan.

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(c) * * *

EPA APPROVED REGULATIONS IN THE TEXAS SIP

State citation	Title/Subject	State approval/ Submittal date	EPA approval date	Explanation
* * * * *				
Section 114.620	Definitions	4/4/2018	[Insert date of Publication in the Federal Register] [Insert Federal Register citation]	
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Section 114.622	Incentive Program Requirements	4/4/2018	[Insert date of Publication in the Federal Register] [Insert Federal Register citation]	
Section 114.623	Small Business Incentives	4/4/2018	[Insert date of Publication in the Federal Register] [Insert Federal Register citation]	
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Section 114.650	Definitions	4/4/2018	[Insert date of Publication in the Federal Register] [Insert Federal Register citation]	
Section 114.651	Applicability	4/4/2018	[Insert date of Publication in the Federal Register] [Insert Federal Register citation]	
Section 114.652	Qualifying Vehicles	4/4/2018	[Insert date of Publication in the Federal Register] [Insert Federal Register citation]	

Section 114.653	Grant Eligibility	4/4/2018	[Insert date of Publication in the Federal Register] [Insert Federal Register citation]	
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Division 8: Seaport and Rail Yard Areas Emissions Reduction Program				
Section 114.680	Definitions	4/4/2018	[Insert date of Publication in the Federal Register] [Insert Federal Register citation]	
Section 114.681	Applicability	4/4/2018	[Insert date of Publication in the Federal Register] [Insert Federal Register citation]	
Section 114.682	Eligible Vehicle Models	4/4/2018	[Insert date of Publication in the Federal Register] [Insert Federal Register citation]	
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[FR Doc. 2018-21453 Filed: 10/3/2018 8:45 am; Publication Date: 10/4/2018]